

CAUSE NO. 2019-06610

JANE DOE § IN THE DISTRICT COURT OF
§
§ HARRIS COUNTY, TEXAS
v. §
§ 80th JUDICIAL DISTRICT
BRENNANS OF HOUSTON, INC. d/b/a §
BRENNANS OF HOUSTON § **JURY TRIAL DEMANDED**

PLAINTIFF'S THIRD AMENDED PETITION

Plaintiff Jessica L. Crutcher (originally filed as Jane Doe) complains of Defendants Brennans of Houston, Inc. d/b/a Brennans of Houston ("Brennans") and Christopher Lockhart and, for cause of action, would respectfully show the Court the following:

I. SUMMARY OF LAWSUIT

Plaintiff is a lawyer and partner at the Houston office of a large international law firm. She has practiced law for more than twelve years.

On October 19 and 20, 2015, Plaintiff was raped and sexually assaulted by a Brennans bartender, Sean Kerrigan, after dining and drinking at Brennans. Kerrigan was aided and abetted by a Brennans manager, Christopher Lockhart. Plaintiff had never met Kerrigan or Lockhart prior to that evening.

Early in the evening on the night in question, Plaintiff believes that Kerrigan drugged her drink. Plaintiff remembers almost nothing after her second drink. Further, on the night in question, Kerrigan over-served Plaintiff with alcohol at Brennans. Regardless of whether or not Kerrigan drugged Plaintiff, his over-service of Plaintiff caused her to be a danger to herself.

Later in the evening, Plaintiff was joined at the bar by Brennans manager Lockhart. Surveillance video shows Lockhart taking a visibly incapacitated Plaintiff out of Brennans, with another Brennans manager looking on, but doing nothing. Lockhart and this other manager's acts and omissions are directly contrary to Brennans' own written policies. Plaintiff has learned

from law enforcement that Kerrigan and Lockhart then took her from Brennans to another bar, the Maple Leaf. From there, Kerrigan and Lockhart took Plaintiff to her home, where she lived alone. Kerrigan raped Plaintiff an unknown number of times at her home that night and into the next morning. Lockhart, at a minimum, aided and abetted the rape and the attempted continuation of the assault the following morning.

Plaintiff went to the emergency room at Ben Taub Hospital the evening of October 20, where a physical examination was performed, a rape kit was collected, and significant vaginal and other physical injuries consistent with rape were documented. Plaintiff simultaneously received invasive and extremely painful treatment from Ben Taub so as to avoid sexually transmitted diseases Kerrigan might have otherwise transmitted to her.

In July 2018, Kerrigan was indicted for felony aggravated sexual assault of Plaintiff. On the same day, Kerrigan was indicted for felony sexual assault of another female, for an unrelated sexual assault. That assault also arose from Kerrigan's work as a bartender; this time at a midtown bar called Pub Fiction. According to public Court records, Kerrigan was aided and abetted in that assault by Fidan Baca, a partner with "The Salt N Pepper Group", the owner of Pub Fiction.

Ultimately, Plaintiff took medical leave from her law firm because of the emotional trauma, and continues to be on medical leave. Plaintiff is currently undergoing treatment for Post-Traumatic Stress Disorder that the savage assault has caused her.

On November 15, 2018, Kerrigan passed away suddenly in Houston from an unknown cause.

II. DISCOVERY CONTROL PLAN

Discovery is intended to be conducted under Level 3, Pursuant to Tex. R. Civ. P. 190.

III. PARTIES

Plaintiff, Jessica L. Crutcher, is an individual and resident of Harris County, Texas.

Defendant, Brennans of Houston, Inc. d/b/a Brennans of Houston, is a Texas corporation with its principal place of business in Houston, Harris County, Texas. This defendant has answered and appeared through counsel and counsel is being served with this amended petition, pursuant Rule 21a.

Defendant Christopher Lockhart is an individual and resident of Harris County Texas. He may be personally served at his residence at 2608 Stanford Street, Apartment C, Houston, TX 77006-2900, or wherever he may be found.

IV. JURISDICTION AND VENUE

This court has jurisdiction over this matter because the damages in question exceed the minimum jurisdiction of this court. Venue is proper in Harris County, Texas, pursuant to TEX. CIV. PRAC. & REM. CODE §15.002(a)(3) because Defendant Brennans' principal place of business is in Harris County, Defendant Lockhart is a resident of Harris County, Texas and because the incident at issue occurred in Harris County.

V. BACKGROUND

Like many Houstonians, over the years (and prior to the rape), Plaintiff frequently patronized Brennans restaurant in Houston. On October 19, 2015, Plaintiff went to Brennans with a male colleague from her firm. They arrived at Brennans at approximately 5:15 p.m., where they sat in the bar's patio area. At approximately 6:45 p.m., Plaintiff's colleague left, and she remained to eat dinner, for which she sat at the bar. Sean Kerrigan was the sole bartender at Brennans at the time and the only one who served Plaintiff that evening.

Almost immediately upon the colleague's departure, Kerrigan "spilled" Plaintiff's drink and replaced it with a different drink "on the house." Plaintiff believes that Kerrigan drugged her at this time, because Plaintiff has almost no memory of finishing the drink and otherwise has almost no memory of the evening after her drink was "spilled" and replaced.

Brennans surveillance video shows that Plaintiff remained at the bar, where she was served some food and several more drinks by Kerrigan. At some point in the evening, Plaintiff was joined by another woman who was sitting at the bar, who Plaintiff did not know and still does not know. Plaintiff has since learned that her name is Heather (Roy) Hayes. This woman, Ms. Hayes, stayed at the bar for the rest of the evening. Plaintiff has since learned that Ms. Hayes was an associate of Kerrigan and Brennans manager, Christopher Lockhart.

Later in the evening, Plaintiff and Ms. Hayes were joined by Brennans manager Lockhart at the Brennans bar. Plaintiff has no memory of meeting Lockhart.

At approximately midnight, Brennans surveillance video shows an obviously impaired Plaintiff being led out of Brennans by Brennans manager Lockhart and his female associate, Ms. Hayes, in the presence of another Brennans manager and Kerrigan. The other Brennans manager did nothing to intervene, in violation of both legal duties and Brennans' own written policies for dealing with visibly impaired customers.

Although Plaintiff has no memory of this, she has been advised by prosecutors that Kerrigan and Lockhart took Plaintiff to a neighboring bar, the Maple Leaf. From there, they went to Plaintiff's home; Plaintiff has no memory of arriving home. For whatever reason, Lockhart took it upon himself to videotape Plaintiff looking for her purse or keys at her home. In the video, it is obvious that she is severely impaired. Plaintiff has no memory of these events.

Plaintiff's next memory is regaining consciousness briefly at some point before dawn, in her bed, nude, with Kerrigan on top of her, forcibly engaging in very rough vaginal intercourse. She felt extreme pain during the rapes, and said so in an attempt to get him to stop, but was too physically incapacitated to force him to stop. Plaintiff drifted in and out of consciousness for the remainder of these assaults.

The next morning, she again regained consciousness, nude in bed, with both Kerrigan and Lockhart pulling the covers off of her and laughing. Although still extremely disoriented, Plaintiff was able to remove them from her house shortly thereafter. Nonetheless, Kerrigan continued to aggressively attempt to rape Plaintiff again (as she was attempting to make them leave), including pushing her down on her back porch and groping her breasts and genitals while she, still disoriented, fought back. The men only left when they became concerned that a neighbor may hear the commotion and yelling. Plaintiff later discovered that the men had stolen prescription medication and money from her purse.

That evening, Plaintiff went to Ben Taub hospital where she reported the details of the evening and the rape, along with ongoing nausea and vomiting, extreme vaginal pain and difficulty urinating. Among other things, a rape assessment was done. The assessment confirmed significant vaginal injuries consistent with rape.

Plaintiff advised Brennans' owner, Alex Brennan-Martin, of the incident. Brennan-Martin and Brennans' General Manager Carl Walker met with Plaintiff and she provided them with these details. At the time, Brennan-Martin knew the full details of the incident, having already reviewed surveillance footage and having had witnesses interviewed. Brennan-Martin advised that he had been counseled not to provide her with the names of the two men. However, Brennan-Martin advised that he had never had a problem with either Kerrigan or Lockhart;

Plaintiff learned after Kerrigan was indicted in July 2018 that this was untrue. In response to her inquiry, Brennan-Martin also told her that one of them (Lockhart) was merely a waiter, which was also untrue. In fact, as Plaintiff also learned after Kerrigan's indictment, Lockhart was the front-of-house manager. Brennan-Martin told Plaintiff that he had reviewed surveillance video and it showed only Lockhart taking Plaintiff out of Brennans which is also contradicted by the actual surveillance video. Also in a response to a direct question from Plaintiff, Brennan-Martin concealed the fact that another manager was present, but did nothing to intervene or to simply follow Brennans' own policies regarding impaired customers. Instead, Brennan-Martin falsely represented that no one else was present, besides Kerrigan and Lockhart. Further, Brennan-Martin did not disclose the actual number of drinks that Kerrigan served Plaintiff. Brennan-Martin later advised Plaintiff that Brennans had terminated the employment of Kerrigan and Lockhart, and had told them that the reason for their termination was Kerrigan's rape of Plaintiff and Lockhart's assistance. Plaintiff now knows that the termination record in their employment file contradicts this representation, as well.

Brennan-Martin did not ever disclose the true facts of the evening at his restaurant to Plaintiff. Instead, Plaintiff learned the first of these facts, for the first time, when shown portions of the Brennans' security footage on July 18, 2018, as part of her cooperation with grand jury proceedings against Kerrigan.

After conducting an extensive investigation, on July 19, 2018, the Harris County District Attorney's office indicted Kerrigan for felony aggravated sexual assault of Plaintiff.

On that day, the District Attorney also indicted Kerrigan for another felony sexual assault of another victim. As noted above, that assault was also connected to Kerrigan's role as a bartender at a neighboring midtown bar, Pub Fiction.

Prior to hiring Kerrigan, Brennans appears to have done no background check on him. Prior to being hired by Brennans, Kerrigan had recently moved to Houston from the New York/New Jersey area, where he had a criminal record. Lockhart had been a longtime employee of Brennans, and gradually rose to higher positions, despite a very checkered work history there, including infractions related to alcohol.

Plaintiff has suffered and continues to suffer extreme emotional distress from her rape and the aftermath. The distress has greatly interfered with both her emotional well-being and her work. On August 17, 2018, the distress reached a point where she has had to take medical leave from her firm, and she is currently undergoing treatment for PTSD. She will undoubtedly continue to struggle with the emotional ramifications of this rape for the rest of her life.

VI. CAUSES OF ACTION

CAUSE OF ACTION 1: DRAM SHOP (BRENNANS)

Plaintiff re-alleges the allegations above.

Defendant Brennans, and its agents, servants, employees, security personnel and management, violated the Dram Shop Act, as codified as Texas Alcohol Beverage Code § 2.02, *et seq.* At all relevant times, Plaintiff was over the age of 18. Defendant Brennans was a negligent provider under the Act, in that Defendant served, sold, or provided alcoholic beverages to a person who was obviously intoxicated to the extent that they presented a clear danger to themselves and others. This conduct contributed to Plaintiff's state of intoxication and was a proximate cause of the injuries sustained by Plaintiff. The bartender (Kerrigan) who served alcohol to Plaintiff was acting in the course and scope of his employment with Defendant when serving alcohol to Plaintiff. Accordingly, Defendant Brennans is responsible for the actions of Kerrigan for his service of alcohol to Plaintiff, under the legal theory of *respondeat superior*.

To the extent that Defendant seeks to shield itself from liability by claiming protection under the safe harbor provisions of the Dram Shop Act, Defendant directly and/or indirectly encouraged its servers to violate the Dram Shop Act by continuing to serve an intoxicated person, among other reasons. Thus, Defendant is not entitled to claim safe harbor provisions.

As a result of Defendant's actions and omissions, Plaintiff has suffered damages as described below.

Plaintiff's personal injuries arise as a result of conduct that violates:

- (1) Section 22.011(a)(1), Penal Code (sexual assault); and
- (2) Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

CAUSE OF ACTION 2: NEGLIGENCE (BRENNANS)

Plaintiff re-alleges the allegations above. In the alternative, Plaintiff asserts the following cause of action against Defendant Brennans.

If it is determined that Plaintiff's impairment was a result of Kerrigan's drugging of Plaintiff, then Brennans owed a duty of care in properly hiring, employing, supervising, managing and retaining Kerrigan and preventing Kerrigan from drugging Plaintiff. Further, Brennans acting through its managers, had a duty to prevent Plaintiff from being taken out of the premises by strangers in an impaired condition. Further, Brennans owed Plaintiff a duty of ordinary care to prevent its manager, Lockhart, from taking a visually impaired Plaintiff from the restaurant for clearly "social" purposes, with other managers looking on, in violation of Brennans' own written policies. This includes a duty of care in hiring, employing, supervising, managing and retaining Lockhart and this other manager. This also includes a duty to devise, implement and enforce appropriate policies, procedures and standards in place to prevent its employees from drugging customers, and to prevent managers from taking, and allowing

someone unassociated with the customer to take, an impaired customer out of the location. As set forth herein, Brennans breached these duties. Brennans' breaches of these duties proximately caused the incident at issue and for Plaintiff to suffer personal injuries and other damages as described below.

Plaintiff's personal injuries arise as a result of conduct that violates:

- (1) Section 22.011(a)(1), Penal Code (sexual assault); and
- (2) Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

In addition to actual damages, Plaintiff seeks punitive damages.

CAUSE OF ACTION 3: PREMISES LIABILITY (BRENNANS)

Plaintiff re-alleges the allegations above. In the alternative, Plaintiff asserts the following cause of action against Defendant Brennans.

Plaintiff was an invitee at Brennans Restaurant, which is owned, operated and managed by Defendant Brennans. Brennans breached its duty of care owed to Plaintiff, as an invitee of the premises. If it is determined that Plaintiff's impairment was a result of Kerrigan's drugging of Plaintiff, then Brennans owed a duty of care in properly hiring, employing, supervising, managing and retaining Kerrigan and preventing Kerrigan from drugging Plaintiff. Further, Brennans acting through its managers, had a duty to prevent Plaintiff from being taken out of the premises by strangers in an impaired condition. Further, Brennans owed Plaintiff a duty of ordinary care to prevent its manager, Lockhart, from taking a visually impaired Plaintiff from the restaurant, with other managers looking on, in violation of Brennans' own written policies. This includes a duty of care in hiring, employing, supervising, managing and retaining Lockhart and this other manager. This also includes a duty to devise, implement and enforce appropriate policies, procedures and standards in place to prevent its employees from drugging customers,

and to prevent managers from taking, and allowing someone unassociated with the customer to take, an impaired customer out of the location. Brennans breached these duties. Brennans' breaches of these duties proximately caused the incident at issue and for Plaintiff to suffer personal injuries and other damages as described below.

Plaintiff's personal injuries arise as a result of conduct that violates:

- (1) Section 22.011(a)(1), Penal Code (sexual assault); and
- (2) Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

In addition to actual damages, Plaintiff seeks punitive damages.

CAUSE OF ACTION 4: GROSS NEGLIGENCE (BRENNANS)

Plaintiff re-alleges the allegations above. In the alternative, Plaintiff asserts the following cause of action against Defendant Brennans.

If it is determined that Plaintiff's impairment was a result of Kerrigan's drugging of Plaintiff, then the acts and/or omissions of Brennans (including its managers) as described above, when viewed objectively from Brennans' standpoint, involve an extreme degree of risk considering the probability and magnitude of potential harm to others. Brennans had subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety and/or welfare of others, specifically, Plaintiff. Therefore, Brennans' acts and omissions constitute gross negligence and malice as those terms are understood by law. Further, the damages at issue arose from an assault and a criminal act. The criminal acts were committed by a Brennans employee and manager. A Brennans manager ratified and approved of the assault and criminal act. Therefore, Plaintiff prays that punitive damages be awarded against Defendant Brennans.

Any caps on punitive damages, under state or federal law, should not be applied because Brennans, and its employee and manager's conduct disqualifies Brennans from the benefit of any caps on exemplary damages. Specifically, Plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following sections of the Penal Code:

- (1) Section 22.011(a)(1), Penal Code (sexual assault); and
- (2) Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

Section 41.008 of the Texas Civil Practice & Remedies Code. Further, Plaintiff's personal injuries arise as a result of conduct that violates these sections of the Penal Code.

CAUSE OF ACTION 5: AIDING AND ABETTING SEXUAL ASSAULT AND BATTERY (LOCKHART, INDIVIDUALLY)

Plaintiff re-alleges the allegations above.

At the time of events described above, Lockhart left with Plaintiff from Brennans (literally dragging her from the restaurant) and took her to a neighboring bar. Lockhart knew that Plaintiff was severely impaired. Lockhart then took Plaintiff to her home where his accomplice, Kerrigan, committed sexual abuse, sexual assaults, and sexual battery on Plaintiff, with Lockhart's aid and assistance. Lockhart was also in Plaintiff's room the next day, as she laid in her bed nude, pulling the covers off of her and laughing at her, with Kerrigan. Accordingly, Lockhart aided, abetted, assisted and facilitated Kerrigan's sexual assault of Plaintiff. As a result of the abuse, Plaintiff has suffered personal injuries and other damages as described below.

Plaintiff's personal injuries arise as a result of conduct that violates:

- (1) Section 22.011(a)(1), Penal Code (sexual assault); and
- (2) Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

In addition to actual damages, Plaintiff seeks punitive damages.

CAUSE OF ACTION 6: ASSAULT (LOCKHART, INDIVIDUALLY)

Plaintiff re-alleges the allegations above.

At the time of events described above, Lockhart left with Plaintiff from Brennans (literally dragging her from the restaurant), took her to a neighboring bar and then to her home. Lockhart knew that Plaintiff was severely impaired. At her home, Lockhart intentionally or knowingly placed Plaintiff in a reasonable apprehension of an imminent harmful or offensive contact, and Lockhart had the present, apparent ability to cause the harmful or offensive contact. Lockhart's conduct was extreme and outrageous. As a result, Plaintiff has suffered personal injuries and other damages as described below.

Plaintiff's personal injuries arise as a result of conduct that violates:

- (1) Section 22.011(a)(1), Penal Code (sexual assault); and
- (2) Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

In addition to actual damages, Plaintiff seeks punitive damages.

VII. DAMAGES

Plaintiff incorporates the previous allegations.

As a direct and proximate result of Defendants' acts and omissions described above, Plaintiff has incurred one or more of the following categories of damages:

- a. Conscious physical and mental pain, and suffering and anguish, past and future;
- b. Physical impairment, past and future;
- c. Loss of enjoyment of life and peace of mind, past and future;
- d. Reasonable and necessary medical, counseling, psychiatric, therapeutic and related expenses, past and future;

Plaintiff also seeks exemplary damages in an amount within the jurisdictional limits of the court.

VIII. PRESERVATION OF EVIDENCE

Plaintiff hereby requests and demand that each Defendant preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit or the damages resulting therefrom, including statements, photographs, videotapes, audiotapes, surveillance or security tapes, business or medical records, incident reports, bills, telephone call slips or records, correspondence, facsimiles, email, voicemail, text messages, any evidence involving the incident in question, and any electronic image or information related to the referenced incident or damages. Failure to maintain such items will constitute “spoliation” of the evidence.

PRAYER

WHEREFORE, Plaintiff Jessica L. Crutcher prays that Defendants Brennans of Houston, Inc. d/b/a Brennans of Houston and Christopher Lockhart answer this Petition, that this case be set for trial without delay, and that Plaintiff recover a judgment from Defendants for her damages in such amount as the evidence may show and the trier of fact may determine to be proper, of at least \$20,000,000.00, in addition to pre-judgment interest, post-judgment interest, costs, punitive damages, and all other and further relief to which Plaintiff may show herself justly entitled.

Plaintiff respectfully requests a trial by jury.

Respectfully submitted,

THE BUZBEE LAW FIRM

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CERTIFICATE OF SERVICE

I certify that I sent the foregoing pleading to counsel in this case, via e-filing, on May 3, 2019:

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